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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Jeffrey Lorber, individually,  
and d/b/a Lorber Building Company

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Linda F. Close on March 24, 2006, at the Office of Administrative Hearings. The record closed at the end of the hearing day.

Christopher M. Kaisershot, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55102-2130, appeared on behalf of the Department of Labor and Industry (Department).<sup>[1]</sup>

Jeffrey Lorber, 520 Fifth Street NE, Staples, MN 56479 appeared on his own behalf without counsel.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, General Counsel, Minnesota Department of Labor and Industry, 443 Lafayette Road N. St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the

deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### **STATEMENT OF ISSUES**

1. Did Respondent perform work negligently or in breach of contract on five projects, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) and 326.91, subd. 1(4) (2004)?

2. Did Respondent perform construction on a project without obtaining applicable local building permits, in violation of Minn. R. subp. 1 H?

3. Did Respondent engage in fraudulent, deceptive and dishonest practices on a project in violation of Minn. Stat. § 326.91, subd. 1(2) (2004)?

4. Did Respondent engage in acts on six projects demonstrating he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) and 326.91, subd. 1(6), (2004)?

5. Did Respondent fail to use payment proceeds for the payment of work contributed to four projects, in violation of Minn. Stat. § 326.91, subd. 1(8) (2004)?

6. Did Respondent divert payment proceeds on four projects from the purpose for which the funds were intended in violation of Minn. R. 2891.0050, subp. 1C?

7. Did Respondent provide the Department with incomplete or misleading information, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3) and 326.91, subd. 1(5) (2004)?

8. Is discipline of Respondent in the public interest?

Based on all of the files, records and proceedings, herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Respondent received a residential building contractor's license on May 16, 2003.

2. Beginning in the spring of 2005 and continuing to the end of 2005, Respondent undertook six construction projects that resulted in complaints being filed with the Department.<sup>[2]</sup>

### ***The Markus Project***

3. In the summer of 2005, Respondent contracted with Scott and Barb Markus to construct an addition to their home. The Markuses paid \$50,000 of the \$110,500 contract price before being forced to hire a new contractor due to Respondent's contract breaches.<sup>[3]</sup>

4. With respect to the Markus project, Respondent failed to complete the project;<sup>[4]</sup> failed to pay subcontractors, although he had received funds to do so;<sup>[5]</sup> listed as subcontractors on the permit application subcontractors who had no knowledge of the project;<sup>[6]</sup> failed to call for a drain tile/foundation inspection; failed to install damp proofing; and did not properly install drain tile to meet code.<sup>[7]</sup>

5. On September 20<sup>th</sup>, October 17<sup>th</sup>, and November 21, 2005, the City of Motley issued inspection reports/correction orders relating to code violations on the Markus project. As of the hearing date, Respondent had failed to correct the code violations.<sup>[8]</sup>

### ***The Gowen Project***

6. In April 2005, Tim and Julie Gowen hired Respondent to construct a home for them. Work was to have been completed within four to five months. As of the hearing date, Respondent had failed to repair siding, complete trim work, install the correct septic system, or install a driveway.<sup>[9]</sup>

7. Between May 2, 2005 and August 25, 2005, Respondent drew \$101,500 from the Gowen's construction loan. On November 15, 2005, the closing occurred for the project. However, the title company found that a number of subcontractors or suppliers had not been paid, notwithstanding Respondent's draws for the project. The title company issued payments to subcontractors or suppliers in excess of \$50,000 in order to complete the closing.<sup>[10]</sup>

### ***The Leech Project***

8. On June 7, 2005, Grayle Leech hired Respondent to build a new home on a lot owned by Respondent in the City of Breezy Point. Leech and Respondent closed on the sale of the property on July 21, 2005. However, on July 20, 2005, there was filed with the County a modification to one of Respondent's existing mortgages to include the property to be sold to Leech the next day. Because of when the mortgage modification was filed, the Leech's title

search never revealed Respondent's mortgage. At the closing, Respondent and his wife signed an Affidavit of Seller stating there were no encumbrances on the property.<sup>[11]</sup> As of the hearing date, Respondent had not arranged to clear title on the Leech property.<sup>[12]</sup>

9. On July 21, 2005, Respondent drew \$30,000 from the Leech construction account to build the foundation. The foundation was poured and the work finally completed on the foundation in October 2005.<sup>[13]</sup>

10. In response to the Department's request for information about payments to subcontractors/suppliers on the Leech project, Respondent provided a list of three subcontractors/suppliers to whom payment had been made, was in progress or was pending.<sup>[14]</sup> Respondent never provided proof of payment, however, and never provided a complete accounting for the \$30,000 draw.<sup>[15]</sup>

11. In September 2005, Respondent drew an additional \$45,000 for framing materials and labor on the Leech project. The framing was never started, and Respondent does not know where the \$45,000 went. Respondent had not refunded the \$45,000 as of the date of the hearing.<sup>[16]</sup>

### ***The Gustafson Project***

12. In October 2005, David Gustafson hired Respondent to construct a garage with a "mother-in-law" suite at a cost of \$120,000.<sup>[17]</sup> Gustafson made a \$40,000 down payment for the project. The City of Pequot Lakes denied the building permit, however, and Respondent and Gustafson agreed to the construction of a garage for \$32,468. They further agreed to additional work to bring the total project cost to \$40,000, which was the amount Gustafson had already paid.<sup>[18]</sup>

13. When revised plans were submitted to the City of Pequot Lakes, they did not include a bathroom for the garage. The Land Use Permit that was issued did not permit that use, and the City requested a revised drawing to include the bathroom. Respondent did not provide the drawing. In addition, the \$200 check Respondent gave the City for the Individual Sewage Treatment System Permit was returned for insufficient funds. As of January 24, 2006, this amount had not been reimbursed to the City.<sup>[19]</sup>

14. As of the hearing date, Respondent had failed to complete work on the Gustafson job<sup>[20]</sup> and had not paid the subcontractors.<sup>[21]</sup>

### ***The Forest Knolls Project***

15. On June 30, 2005, Respondent drew \$40,000 and on September 15, 2005 another \$35,000 for work on the Forest Knolls property, which Respondent owned and was developing on spec.<sup>[22]</sup> Welna Masonry performed work on the

project, but was never paid, notwithstanding Respondent's draws. On October 21, 2005, Welna placed a mechanic's lien on the property for \$16,729.74. Respondent also failed to pay Schrupp Excavating for its work on the project, although funds had been drawn for work by Schrupp.<sup>[23]</sup>

### ***The Hebert Project***

16. On December 20, 2005, Charles Hebert hired Respondent to construct a lake home in Nevis, Minnesota.<sup>[24]</sup> Hebert had already paid Respondent \$50,000 of the \$197,500 contract price on October 14, 2005.<sup>[25]</sup> In December, Hebert gave Respondent another \$30,000 based on Hebert's understanding that the foundation and backfilling had been done, and Respondent was ready to frame.<sup>[26]</sup>

17. On December 30, 2005, Respondent deposited the \$30,000 check to his personal bank account rather than to his business account. Prior to the deposit, the account had a negative balance.<sup>[27]</sup> On January 10, 2006, Respondent drew \$21,489.21 from the account to pay off a personal loan secured by a 2003 Ford truck.<sup>[28]</sup> The same day, he used funds from the account to pay off a loan in the amount of \$2,846.56 for a truck trailer.<sup>[29]</sup>

18. Respondent pulled a building permit for the Hebert project from Hubbard County Environment Services Office. However, the check was returned by the bank due to insufficient funds. Respondent had not made good on the check by the hearing date.<sup>[30]</sup>

19. Respondent failed to pay five subcontractors for their work on the Hebert project. In addition, the foundation Respondent poured does not meet code in that it lacks sufficient rebar. It will have to be removed and re-poured.<sup>[31]</sup>

### ***The Department's Requests***

20. By a letter dated December 5, 2005, the Department requested that Respondent provide information in response to a complaint filed by the Markuses with the Department. Among other things, the Department requested a complete accounting for the \$50,000 the Markuses had paid Respondent.<sup>[32]</sup>

21. The Department's December 5, 2005 letter also asked Respondent to provide information about the Gowen project. Among other things, the Department requested a complete accounting for the \$101,500 Respondent had drawn from the construction loan.

22. On December 22, 2005, the Department received a packet of information from Respondent.<sup>[33]</sup> In it, Respondent claimed to have disbursed

\$44,880 on the Markus project as payment to seven subcontractors/suppliers and for construction work by his company.<sup>[34]</sup>

23. By a letter dated December 22, 2005, the Department requested more complete information from Respondent and ordered him to appear before Investigator Chris Williams (Williams) with sixteen items of information on January 3, 2006.<sup>[35]</sup>

24. The Department's December 22, 2005 letter also asked Respondent to provide information about the Gustafson project. Among other things, the Department requested a complete accounting for monies paid; a list of the subcontractors and suppliers; copies of lien waivers; and proof of payment to the subcontractor and suppliers.

25. The Department's December 22, 2005 letter requesting also asked Respondent to provide information about the Leech project. Among other things, the Department requested a copy of the contract; copies of building permits and a complete accounting for the monies paid.

26. On January 3, 2006, Respondent appeared before Williams. However, he did not bring any of the sixteen items with him, and the meeting was short. Williams gave Respondent until Friday, January 6<sup>th</sup>, to provide the information. Respondent did not comply.<sup>[36]</sup>

27. On January 10<sup>th</sup>, the Department received from Respondent further information about the subcontractor/supplier disbursements on the Markus project. The information conflicted with earlier information in that the new information indicated only two subcontractor/suppliers had been paid anything at all and payment was pending as to the others.<sup>[37]</sup> Respondent did not provide proof of the payments to the two subcontractor/suppliers.<sup>[38]</sup>

28. Respondent's information to the Department indicated the Markuses were due a refund of undisbursed funds in the amount of \$5,120.<sup>[39]</sup> Respondent had not refunded that amount to the Markuses as of the date of hearing.<sup>[40]</sup>

29. Respondent's information to the Department included lists of the Markus,<sup>[41]</sup> Leech,<sup>[42]</sup> and Gustafson subcontractor/suppliers;<sup>[43]</sup> a list of payments allegedly made to one of the subcontractors, Schrupp;<sup>[44]</sup> a copy of the Gustafson contract, in the form of a two page estimate;<sup>[45]</sup> and a payment schedule for the Hebert project.<sup>[46]</sup> Information requested was not otherwise provided.<sup>[47]</sup> Respondent never provided an accounting for the Gowan, Gustafson, or Leech projects.<sup>[48]</sup>

30. Respondent testified that he undertook too many new projects in 2005. Due to his inexperience, he believes his project estimates were faulty, and

he failed to appreciate the extensive book work associated with running his business. He had only nine employees and Respondent believes that was insufficient to complete all the work he had promised.<sup>[49]</sup>

Based on the foregoing Findings of Fact, the Administrative Law Judge reaches the following:

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry are authorized to consider the charges against Respondent under Minn. Stat. §§ 47.027, subd. 7, 326.91, subd. 1 and Executive Order 193.

2. Respondent received due, proper and timely notice of the charges, and of the time and place of the hearing.

3. The Department has fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

4. Minn. Stat. §§ 47.027, subd. 7 and 326.91, subd. 1 authorize the Commissioner to take disciplinary action against the license of a person who violates any law, rule or order related to the duties and responsibilities entrusted to the Commissioner.

5. Pursuant to Minn. R. 1400.7300, subp. 5, the burden is on the Department to prove by a preponderance of the evidence that Respondent has violated a law, rule, or order related to the Commissioner's duties and responsibilities.

6. With respect to the violations enumerated in Conclusions 7 through 14 below, the Department has proven the violations by a preponderance of the evidence.

7. Respondent performed work negligently or in breach of contract by failing to complete the Markus, Leech, Gowen, Gustafson, and Hebert projects, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) and 326.91, subd. 1(4) (2004).

8. Respondent violated Minn. Stat. § 326.91, subd. 1(4) (2004) on the Hebert project by pouring a foundation that failed to meet code.

9. Respondent violated Minn. Stat. § 45.027, subd. 7(a)(2) on the Markus project by failing to file with the City an accurate list of subcontractors and failing to request inspection. This conduct also violated Minn. Rule 2891.0040, subp. 1H. Listing incorrect subcontractors was an act of fraud, deception or dishonesty, in violation of Minn. Stat. § 326.91, subd. 1 (2).

10. Respondent engaged in acts demonstrating he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4) and 326.91, subd. 1(6), (2004) on the Markus, Gowen, Leech, Gustafson, Forrest Knolls, and Hebert projects by failing to pay subcontractor/suppliers.

11. Respondent violated Minn. R. 2891.0500, subp. 1C by diverting funds paid to Respondent for the Markus, Leech, Hebert, and Forrest Knolls projects.

12. Respondent violated Minn. Stat. §§ 45.027, subd. 7(a)(4) and 326.91, subd. 1(6), (2004) by placing a mortgage on the Leech property the day before the sale of that property to Leech, thereby demonstrating he is untrustworthy, irresponsible and incompetent or unqualified for licensure.

13. Respondent violated Minn. Stat. § 326.91, subd. 1(8), (2004) by failing to use payment proceeds for the work contributed to the Markus, Gusafson, Forest Knolls, and Hebert projects.

14. Respondent violated Minn. Stat. § 45.027, subd. 7 (a)(3) and 326.91, subd. 1(5) by providing the Department with incomplete or misleading information.

15. The Department has shown by a preponderance of the evidence that discipline of Respondent is in the public interest.

16. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Labor and Industry take disciplinary action against the Respondent's license.

Dated this 10<sup>th</sup> day of April 2006.

s/Linda F. Close  
LINDA F. CLOSE  
Administrative Law Judge



Reported: Tape Recorded (two tapes)

## MEMORANDUM

Respondent's conduct of his construction business in 2005 presents a classic case of a young contractor with too little experience and too few resources undertaking too much work in too short a time period. Respondent admits to the most serious allegations herein. He did take client payments but failed to use them for their intended purposes. He repeatedly failed to pay subcontractors, and he retired personal debt with one of the payments. He cannot explain what happened to all the funds he received. He failed to complete jobs as promised and failed to correct work at some of the jobs.

Respondent disputes few of the facts herein. For the most part, his testimony sought instead to explain why certain things had happened. For example, Respondent does not deny naming subcontractors on a permit without their knowledge. He explains that he assumed they would serve as subcontractors because they had on other of Respondent's jobs. Again, he does not deny placing a mortgage on the Leech property, but explains that this was due to the bank's misunderstanding about which property the modified mortgage was to include. In the case of the latter explanation, Respondent's testimony was not credible, inasmuch as the modified mortgage listed only two properties, one of which was the Leech property.

At hearing Respondent admitted to his lack of business acumen as a residential builder. But he displayed little appreciation for the extent to which he has hurt others. For the homeowners, the projects represented substantial financial commitments for what may well be their most significant asset—their homes. They have been left with unfinished projects for which they may not be able to secure further funds for completion. For the subcontractors and suppliers who were never paid, working without compensation may threaten both their business and their personal lives. All trusted Respondent to conduct himself as a trustworthy professional, and Respondent simply did not do that.

The violations shown by the Department are serious and extensive. Respondent's being in business represents a dangerous situation for consumers. For these reasons, discipline is in the public interest.

L.F.C.

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<sup>[1]</sup> By Executive Order 193, signed May 16, 2005, the Governor transferred responsibility for regulation of residential building contractors from the Department of Commerce to the Department of Labor and Industry.

<sup>[2]</sup> Testimony of Investigator Chris Williams (Williams).

- [3] Testimony of Williams.
- [4] Ex. 2.
- [5] Ex. 2.
- [6] Ex. 3.
- [7] Ex. 3.
- [8] Ex. 3; testimony of Williams.
- [9] Testimony of Williams; testimony of Lorber.
- [10] Ex. 9; testimony of Williams;
- [11] Ex. 11; testimony of Williams.
- [12] Testimony of Jeffrey Lorber (Lorber).
- [13] Testimony of Williams; Ex. 13.
- [14] Ex. 15.
- [15] Testimony of Williams
- [16] Testimony of Williams; testimony of Lorber.
- [17] Ex. 17.
- [18] Testimony of Williams; testimony of Lorber.
- [19] Ex. 21; testimony of Williams
- [20] Ex. 18 lists fourteen items Respondent had failed to complete, including major items such as hooking up water to the garage bathroom; painting the interior and hanging lamps; installing cable TV lines; filling around the structure; providing lien releases; and having a final inspection done once everything was complete.
- [21] Ex. 19; testimony of Williams; testimony of Lorber.
- [22] Ex. 22. At hearing, the Department corrected the Notice of Hearing references to the Forest Knoll property as the "Sorensen complaint." The Sorensens had actually sold the property to Respondent. See Ex. 22; testimony of Williams.
- [23] Testimony of Lorber; Ex. 22.
- [24] Ex. 23
- [25] Ex. 24
- [26] Testimony of Lorber; testimony of Williams; Ex. 24.
- [27] Ex. 26, 28.
- [28] Ex. 27.
- [29] Testimony of Lorber; Ex. 28.
- [30] Testimony of Williams; Ex. 25.
- [31] Testimony of Williams; Ex. 29; Ex. 37.
- [32] Ex. 4; testimony of Williams.
- [33] Ex. 5.
- [34] Ex. 5.
- [35] Ex. 6.
- [36] Testimony of Williams.
- [37] Testimony of Williams; Ex. 5, 7.
- [38] Testimony of Williams.
- [39] Ex. 5.
- [40] Testimony of Williams.
- [41] Ex. 7.
- [42] Ex. 15.
- [43] Ex. 20.
- [44] Ex. 35.
- [45] Ex. 17.
- [46] Ex. 34.
- [47] Testimony of Williams.
- [48] Testimony of Williams; testimony of Lorber.
- [49] Testimony of Lorber.